

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket HWCA 00/01-6004
)	
)	
Valero Refining Co.-California))	CONSENT ORDER
3400 East Second Street)	
Benicia, CA 94510-1097)	
EPA ID# CAD063001770)	Health and Safety Code
)	Section 25187
)	
Respondent.)	
_____)	

The State Department of Toxic Substances Control (Department) and Valero Refining Company - California, a Delaware Corporation doing business in California (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste at the following location: 3400 East Second Street, Benicia, California. (Site).

2. The Department inspected the Site on April 4, 5 and 6, 2000, and on March 6, 2002.

3. The Department alleges the following violations:

3.1 The Respondent violated Chapter 6.5, Health and Safety Code Section 25189.2(c) in that on or about April 4, 5 and 6, 2000, Respondent: (a) disposed of waste identified as a "mixture of stretford solution containing vanadium, sulfur, soil and water" onto the ground from four (4) roll-off bins located in the bin storage lot, (b) disposed of waste sulfur and waste identified as "mixture of stretford solution containing vanadium,

sulfur, soil and water" into the sump located in the south bay within the concrete pad located west of the Cooling Tower Area, and (c) disposed of waste sulfur and stretford solution onto the soil outside the concrete pad bermed area. Disposal of these wastes occurred at a point which was not authorized according to the provisions of Chapter 6.5.

3.2. The Respondent violated Chapter 6.5, Health and Safety Code Section 25201(a) in that on or about April 4, 5 and 6, 2000, Respondent treated waste sulfur and waste identified as a "mixture of stretford solution containing vanadium, sulfur, soil and water" without a permit or other grant of authorization from the Department. Respondent treated the above-referenced wastes in Respondent's Wastewater Treatment System. These wastes were not "oil-bearing" materials and therefore did not meet the exclusion found in Section 25143.2 and 25144 of the Health and Safety Code.

3.3. The Respondent violated Chapter 6.5, Health and Safety Code Section 25201(a), California Code of Regulations, Title 22, Sections 66262.34 in that on or about April 4, 5 and 6, 2000, Respondent stored waste sulfur and waste identified as a "mixture of stretford solution containing vanadium, sulfur, soil, and water" onto the concrete pad located west of the Cooling Tower Area without a permit or other grant of authorization from the Department.

3.4. The Respondent violated Section 66265.171 of Title 22 of the California Code of Regulations in that on or about April 4, 5 and 6, 2000, Respondent failed to transfer waste

identified as a "mixture of stretford solution containing vanadium, sulfur, soil and water" from four (4) roll-off bins that were leaking the above-referenced waste to containers that were in good condition, or manage the waste in some other way that complies with the requirements of Chapter 6.5.

3.5. The Respondent violated Section 66265.51(b) of Title 22 of the California Code of Regulations in that on or about April 4, 5 and 6, 2000, Respondent failed to immediately carry out the provisions of the contingency plan upon the release of stretford solution waste onto the ground from the roll-off bins located in the Bin Storage Lot.

3.6. The Respondent violated Section 66265.193 of Title 22 of the California Code of Regulations in that on or about April 4, 5, and 6, 2000, Respondent failed to provide secondary containment that meets the requirements of the Section, in order to prevent the release of hazardous waste or hazardous waste constituents to the environment. Respondent failed to maintain the containment area at the Selenium Treatment Unit by (a) failing to repair the cracks on the asphalt floor adjacent to a tank containing waste identified as "thickener primary sludge," and (b) failing to repair the cracks on the asphalt berm serving as secondary containment.

3.7. The Respondent violated Section 66262.11 of Title 22, California Code of Regulations in that on or about April 4, 5 and 6, 2000, Respondent failed to determine if a waste is hazardous by testing the waste, applying knowledge of characteristics, or by determining whether the waste is excluded

by regulation. Respondent failed to determine if the contents of the unlabeled Roll-off Bin #272, located in the Bin Storage Lot, were hazardous waste.

3.8. The Respondent violated Section 66262.11 of Title 22, California Code of Regulations in that on or about March 6, 2002, Respondent failed to determine if a waste is hazardous by testing the waste, applying knowledge of characteristics, or by determining whether the waste is excluded by regulation. A plastic bag of black material in the Valero Scrap Yard that had not been characterized at the time of the inspection was subsequently characterized as exceeding the TCLP hazardous waste threshold for trichloroethylene.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations. Furthermore, this Consent Order shall not prevent the Department from introducing, in any later enforcement action or other proceeding, evidence of facts supporting the existence of the violations alleged above.

9. By entering into this Consent Order, Respondent does not admit any of the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent has demonstrated that the violations stated in Sections 3.1 through 3.8 above have been corrected. No further corrective action or submittal is required.

PAYMENTS

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay a total of \$115,000, of which \$56,208 is a penalty, \$40,056 is reimbursement of the Department's costs, and \$18,736 is a supplemental environmental project consisting of a contribution to the California District Attorneys Association Environmental Project. Respondent's check for \$96,264 (for the penalty and costs) shall be made payable to Department of Toxic Substances Control. Respondent's check for \$18,736 (for the supplemental environmental project) shall be made payable to the California District Attorneys Association Environmental Project. Both checks shall be delivered, together with the attached Payment Voucher, to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of each check shall be sent to:

Ms. Astrid Johnson, Unit Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control

1515 Tollhouse Road
Clovis, California 93611

Mr. James J. Grace, Esq.
Staff Counsel
Department of Toxic Substances Control
Office of Legal Counsel
1001 I Street, 23rd Floor
P.O. Box 806
Sacramento, California 95812-0806

Mr. Timothy E. Sullivan, Esq.
Deputy Attorney General
California Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, California 94612-0550

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to HSC § 25360.1 and to pay all costs incurred by the Department in pursuing collection, including attorneys' fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors,

agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals and partners, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

12.7. Publicizing Supplemental Environmental Project: If Respondent publicizes the contribution to the California District Attorneys Association Environmental Project made pursuant to this Consent Order, Respondent shall state in a prominent manner that the contribution was made as part of the settlement of an enforcement action.

Dated: 6/20/02 {John U. Roach}
Signature of Respondent's
Representative

{John U. Roach} Vice President/General Manager
Typed or Printed Name and Title of
Respondent's Representative

Dated: 6/28/02

{Charlene Williams}

Charlene Williams

Chief, Northern California Branch

Statewide Compliance Division

Department of Toxic Substances Control